

REMARKS

In this application, claims 1-58 are pending. In the pending Office Action, Examiner Kim made a restriction requirement between two identified groups of claims, which were characterized as follows:

- I. Claims 1-35, 36, and 37 are drawn to tether, classified in class 606, subclass 74.
- II. Claims 38-58, drawn to method to treat orthopaedic defect, classified in class 606, subclass 60.

The above language concerning the examiner's groups is taken verbatim from the Office Action for the sake of clarity, and is not intended as an admission of any sort by Applicants as to the subject matter or classification of any claim.

As Examiner Kim's restriction requirement relied on the provisions of 35 U.S.C. § 121, which makes restriction permissive, per standard PTO practice noted in MPEP 803 and 808.02 this application should be examined as a whole if it can be done without undue burden on the examiner. Accordingly, Applicants elect group I (claims 1-37) for prosecution, with traverse on the grounds that searching and examining the entire application can be made without serious burden. For example, method claims 38-58 include securing a tether to a bone portion, the tether comprising a cord, a first sheath and a radiopaque element. Likewise, apparatus claim 1 recites a tether comprising a cord, a first sheath and a radiopaque element. Searching and consideration of references regarding one set of claims will thus be identical or at least overlap to a very great extent. Put another way, most or all of the references, if any, that are relevant to one set of claims will likely be relevant to the other set of claims. Since the research and analysis effort required for examining one set of claims will be essentially the same as for examining both sets

of claims, it is respectfully submitted that there will be no significant extra burden in searching and examining both sets of claims. Per MPEP 803 and 808.02, the restriction requirement should be withdrawn and all pending claims should be examined.

The pending Office Action also made a requirement for election of species. This requirement is also traversed. Examiner Kim indicated the opinion that this application includes claims directed to more than one species “of the claimed invention.” Specifically, the following species were identified:

Species 1: Figure 1

Species 2: Figure 2

The listing above is taken from the Office Action, and is not intended as an admission of any sort by Applicants as to the subject matter of any claim or as to any embodiment disclosed in the application.

The Examiner relied on 35 U.S.C. § 121 in requesting that Applicant elect a single species. The Examiner added the opinion that claims 1, 36 and 37 were generic.

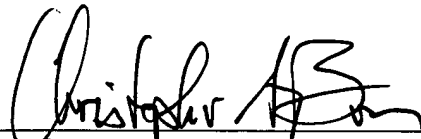
Applicant elects species 1, corresponding to FIG. 1 with traverse. All of claims 1-58 are readable on the embodiment of FIG. 1. Applicants reserve the right to claim genericness of claims other than claims 1, 36 and 37 later as may be appropriate. Further, examination of the claims with reference to all of the disclosed embodiments would not be burdensome, and would promote efficiency. Based on the existence of several generic claims and the lack of significant burden, Applicants respectfully request reconsideration of the election requirement.

Several amendments have been made to the claims and specification, as noted above. These amendments have been made to address errors of a typographical nature, and not to

overcome any rejection of any kind. The amendments do not narrow any claims. Applicants maintain that the claims are entitled to the full scope to which their language entitles them.

In conclusion, Applicants have provisionally elected claims 1-37 of this application, with traverse, in response to the present restriction requirement. Applicants also have provisionally elected species 1 with traverse. It is respectfully requested that Examiner Kim reconsider the present restriction and election requirements and withdraw them. An Office Action toward a Notice of Allowance in this case is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christopher A. Brown", is written over a horizontal line.

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